

First City National Bank of Beaumont

505 Orleans  
P.O. Box 3391  
Beaumont, Texas 77704  
(409) 838-9268

Barry Zerkle

Vice President

14532

RECORDATION NO. \_\_\_\_\_ Filed 1475

January 2, 1985

JAN 7 1985 10 15 AM

**FIRSTCITY**<sup>TM</sup>

INTERSTATE COMMERCE COMMISSION

Secretary  
Interstate Commerce Commission  
Documents for Recordation  
Washington, D.C. 20423

Dear Secretary:

I have enclosed an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a security agreement, a primary document, dated December 17, 1984.

The names and addresses of the parties to the documents are as follows:

Bank: First City National Bank of Beaumont  
Post Office Box 3391  
Beaumont, Texas 77704  
ATTENTION: Mr. Barry Zerkle

Borrower: William F. Scott and Richard R. Scott  
Post Office Box 2725  
Port Arthur, Texas 77643

A description of the equipment covered by the document follows:

Type of Equipment: Railroad cars  
AAR Designation: 4000 Cubic foot, 100 ton gondola coal cars. Rotary cupplers.  
Identifying Marks: TX TX 4041--4050  
Number of Cars: 10

Page 2  
ICC  
01-02-85

A fee of \$50.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation with evidence of recordation to:

Mr. Barry Zerkle  
First City National Bank of Beaumont  
Post Office Box 3391  
Beaumont, Texas 77704

A short summary of the document to appear in the index follows:

Security Agreement between: First City National Bank of  
Beaumont  
Post Office Box 3391  
Beaumont, Texas

AND

William F. Scott and Richard  
R. Scott  
Post Office Box 2725  
Port Arthur, Texas 77643

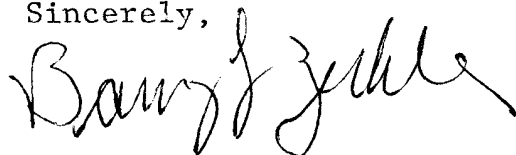
Dated:

December 17, 1984

Covering:

10, 4000 cubic foot, 100 ton  
gondola coal cars with designation  
TX TX 4041--4050.

Sincerely,



Barry L. Zerkle  
Senior Vice President

BLZ/tjm

Enclosures

1/8/85

**Interstate Commerce Commission**  
Washington, D.C. 20423

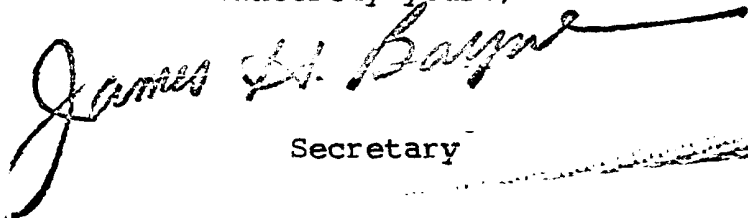
**OFFICE OF THE SECRETARY**

Berry Zerkle  
First City Natl. Bank Of Beaumont  
P.O.Box 3391  
Beaumont, Texas 77704

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/7/85 at 10:15am and assigned re-recording number(s). 14532

Sincerely yours,

  
Secretary

Enclosure(s)



RECORDATION NO. 14532

SECURITY AGREEMENT  
Equipment and Other Property

R 12500 / 75992540/BLZ/TJA/2101

JAN 7 1985 10 15 AM

DECEMBER 17 1984

## Section 1. Security Interest.

1.01 Debtor: (Name and Address)

INTERSTATE COMMERCE COMMISSION

WILLIAM F. SCOTT AND RICHARD R. SCOTT  
P. O. BOX 2725  
PORT ARTHUR, TX 77643

Secured Party:

FIRST CITY NATIONAL BANK OF BEAUMONT  
505 ORLEANS  
BEAUMONT, TX 77701

1.02 The Obligations secured by this Security Agreement are those of Debtor and, if of someone else, of:

1.03 Collateral: The Collateral shall include all property referred to in the definition of "Collateral" in Section 2.04, and specifically shall include, without limitation, one or more of the following items which are checked or otherwise indicated to be included:

☐ (a) All of Debtor's

including, without limitation, any equipment or other goods specified in subsection 1.03 (b).

☒ (b) The following equipment or other goods:

## Description

## Location

TYPE EQUIPMENT: RAILROAD CARS

AAR DESIGNATION: 4000 CUBIC FOOT, 100 TON GONDOLA COAL CARS,  
ROTARY CUPLERS

IDENTIFYING MARKS: TX TX 4041-4050

NUMBER OF CARS: 10

- ☐ (c) Equipment used in farming operations, or farm products, or accounts or general intangibles arising from or related to the sale of farm products by a farmer.
- ☐ (d) Goods used or bought for use primarily for personal, family or household purposes.
- ☐ (e) Goods held by Debtor for sale or lease or furnished or to be furnished under contracts of service, or, if such goods are raw materials, work in progress or materials used or consumed in a business.
- ☐ (f) Goods which are mobile and which are of a type normally used in more than one jurisdiction.
- ☐ (g) Goods which may be affixed to other real or personal property.
- ☐ (h) Goods which are covered by or subject to any certificate of title, document of title, warehouse receipt or other document. Such certificates, documents or receipts are a part of the Collateral and include, without limitation, the following:

1.04 With respect to any Collateral which is not covered by a certificate of title or other document evidencing ownership thereof, such Collateral is located or shall be located only in the following states or foreign countries: SYMS BAYOU SITE OF TEXAS TX TX MARINE TRANSPORTATION CO., HARRIS COUNTY, TEXAS

N/A

N/A

1.05 If any Collateral is or will become attached or affixed to any real or personal property not subject to this Security Agreement, such other real or personal property is owned and described as follows: N/A

Owner: N/A

Description: N/A

N/A

N/A

1.06 Debtor hereby grants to Secured Party a security interest in, general lien upon, and right of set-off against the Collateral to secure the Obligations, and the performance by Debtor of all the terms and agreements of Debtor pursuant to this Security Agreement or of any Obligor in connection with the transaction giving rise to this Security Agreement.

## Section 2. Definitions.

2.01 "Debtor" shall mean the party described as Debtor in Section 1.01, and "Secured Party" shall mean the party described as Secured Party in Section 1.01.

2.02 "Obligations" shall mean all present and future loans, advances, liabilities, obligations, covenants, duties and indebtedness of Debtor and/or any other person or entity described in Section 1.02 to Secured Party, and any and all renewals, extensions for any period, rearrangements or enlargements thereof, whether evidenced by any note or other instrument or agreement, whether arising by an extension of credit, letter of credit, overdraft, endorsement, loan, guaranty, indemnification or otherwise, whether direct or indirect, including, without limitation, any of the foregoing acquired by assignment or participation, absolute or contingent, due or to become due. The Obligations shall also include all interest, charges, expenses, attorneys' or other fees and any other sums incurred by Secured Party in connection with the execution, administration or enforcement of Secured Party's rights and remedies hereunder, or under any other agreement with Debtor and/or with any other person or entity described in Section 1.02.

2.03 "General Intangibles" shall mean all personal property other than goods, accounts, chattel paper, documents, instruments and money. Such personal property (excluding the other property referred to in the preceding sentence) shall include, without limitation, all (i) contractual rights, rights to performance, and claims for damages, refunds (including tax refunds) or other monies due or to become due, (ii) orders, franchises, permits, certificates, licenses, consents, exemptions, variances, authorizations or other approvals by any governmental agency or court, (iii) consulting, engineering and technological information and specifications, design data, patent rights, trade secrets, literary rights, copyrights, trademarks, labels, trade names and other intellectual property, (iv) business records, computer tapes and computer software, (v) goodwill and (vi) all other intangible personal property, whether similar or dissimilar to the foregoing.

2.04 "Collateral" shall mean (i) all property, wherever located, referred to in Section 1.03 (by checking or writing in any blank space provided therein); (ii) in the event that subsection 1.03(b) has not been checked or otherwise marked in the blank space provided therein, all Debtor's equipment as well as any other items which are checked or otherwise indicated to be included in the Collateral; (iii) all General Intangibles related to any property referred to in Section 1.03 or this Section 2.04; (iv) any related or additional property from time to time delivered to or deposited with Secured Party by or for the account of Debtor; (v) all certificates of title or other documents evidencing ownership or possession of or otherwise relating to any property referred to THIS SECURITY AGREEMENT INCLUDES PROVISIONS ON THE REVERSE SIDE OF THIS PAGE AND ON ADDITIONAL PAGES, ALL OF WHICH ARE PART OF THIS SECURITY AGREEMENT.

DEBTOR: WILLIAM F. SCOTT AND RICHARD R. SCOTT

By:

Name:

Title:

4.20 Debtor shall at all times keep the Collateral, including proceeds, or cause it to be kept (when in the possession of warehousemen, bailees, agents, independent contractors or other third persons), separate and distinct from other property (except as to the attachment of fixtures to real estate).

**Section 5. Defaults.** Any of the following events shall be considered an Event of Default under this Security Agreement:

5.01 Debtor or any Obligor defaults in any payment due and owing pursuant to the Obligations.

5.02 Any representation or warranty made by Debtor or any Obligor to Secured Party proves to have been incorrect in any material respect as of the date thereof.

5.03 Default is made by Debtor or any Obligor in the performance of any covenants or agreements contained in this Security Agreement or in any other document now or hereafter executed in connection with or as security for the Obligations.

5.04 The sale, assignment, distribution, transfer or granting of a lien on any of the Collateral to or in favor of any party other than Secured Party, unless otherwise expressly permitted by this Security Agreement or in writing by Secured Party.

5.05 The violation by Debtor or any Obligor of, or the failure of the Collateral to comply with, any applicable law, statute, ordinance, regulation or administrative order.

5.06 The loss, theft, substantial damage to or destruction of the Collateral or of any material portion thereof (whether or not covered by insurance).

5.07 The entry of a judgment, issuance of an injunction, order of attachment, or any other process against Debtor or any Obligor or the Collateral which in the sole opinion of Secured Party impairs Debtor's (or any such Obligor's) ability to pay or perform the Obligations.

5.08 Debtor or any Obligor shall respectively:

- (a) die, dissolve or otherwise terminate its existence in its form as of the date hereof;
- (b) become insolvent or suffer a business failure;
- (c) have a custodian, receiver or agent appointed or authorized to take charge of its properties;
- (d) make an assignment for the benefit of creditors or call a meeting of creditors for the composition of debts; or
- (e) be subject to the commencement of any proceeding in bankruptcy or under other insolvency laws.

5.09 In the sole opinion of Secured Party, there is any deterioration, impairment, decline in character or value, or material adverse change (whether actual or reasonably anticipated) in either:

- (a) the assets, operations or conditions of Debtor or any Obligor; or
- (b) any part of the Collateral or any other property subject to a lien in favor of Secured Party as security for the Obligations that causes the Collateral or such other property in the judgment of Secured Party to become unsatisfactory as to character or value.

5.10 Any guaranty or surety executed in connection with the Obligations shall be terminated or revoked, or payment shall be refused under any letter of credit securing any or all of the Obligations or any such letter of credit shall expire without the written consent of Secured Party, or any event occurs which in the sole opinion of Secured Party would materially and adversely affect Debtor's or any Obligor's ability to pay or perform the Obligations.

5.11 Default by Debtor or any Obligor in any payment of principal or of interest on any other indebtedness, guaranty or other obligation (whether to Secured Party or to any other party) provided with respect thereto, or in the performance of any other agreement, term or condition if the effect of such default is to cause such obligation to become due on demand or before its stated maturity or to permit the holder(s) of such obligation or the trustee(s) under any such agreement or instrument to cause such obligation to become due on demand or prior to its stated maturity, whether or not such default or failure to perform should be waived by the holder(s) of such obligation or such trustee(s).

#### **Section 6. Rights, Duties and Powers of Secured Party.**

6.01 Secured Party may enforce its rights hereunder without prior judicial process or judicial hearing, and to the extent permitted by law, Debtor expressly waives any and all legal rights which might otherwise require Secured Party to enforce its rights by judicial process. Debtor recognizes and concedes that such non-judicial remedies are consistent with usage of trade, are responsive to commercial necessity, and are the result of bargain at arms' length.

6.02 Debtor hereby grants to Secured Party, in connection with the protection, exercising or assuring of Secured Party's rights, interests and remedies hereunder, the right to receive, change the address for delivery, open and dispose of mail addressed to Debtor, and to execute, assign and endorse negotiable and other instruments for the payment of money, documents of title or other evidences of payment, shipment or storage for any form of Collateral on behalf of and in the name of Debtor.

6.03 Secured Party may, at its option, discharge any taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Secured Party immediately and without demand for any payment so made, plus interest thereon at the Highest Lawful Rate.

6.04 Debtor hereby irrevocably appoints Secured Party as Debtor's true and lawful agent and attorney-in-fact, with full power of substitution, in Secured Party's name or Debtor's name or otherwise, but at Debtor's cost and expense and without notice to Debtor, to obtain, adjust, sell and cancel any insurance with respect to the Collateral, and endorse any draft drawn by insurers of the Collateral. Secured Party may apply any proceeds of such insurance to the Obligations (whether or not due).

6.05 Secured Party may transfer any or all of the indebtedness evidenced by the Obligations, and upon any such transfer Secured Party may transfer any or all of the Collateral and shall be fully discharged thereafter from all liability therefor. Any transferee of the Collateral shall be vested with all rights, powers and remedies of Secured Party hereunder. With respect to any partial transfer of Collateral, Secured Party shall retain all rights, powers and remedies hereby given with respect to the retained Collateral. Secured Party may at any time deliver any or all of the Collateral to Debtor whose receipt shall be a complete and full acquittance for the Collateral so delivered, and Secured Party shall thereafter be discharged from any liability with respect to such Collateral.

6.06 In connection with any transfer or sale (to Secured Party or any other person or entity) of the Collateral, Secured Party is hereby granted a transferable license or other right to use, without any charge, any of Debtor's labels, patents, copyrights, trade names, trade secrets, trademarks or other similar property in completing production, advertising or selling such Collateral, and Debtor's rights under all licenses and franchise agreements shall inure to the benefit of Secured Party and any transferee of all or any part of the Collateral.

6.07 The rights, powers and remedies of Secured Party hereunder shall be in addition to all rights, powers and remedies given by law or in equity. The exercise by Secured Party of any one or more of the rights, powers and remedies herein shall not be construed as a waiver of any other rights, powers and remedies. Regardless of whether or not the Uniform Commercial Code is in effect in the jurisdiction where such rights, powers and remedies are asserted, Secured Party shall have the rights, powers and remedies of a secured party under the Code. If any of the Obligations are given in renewal, extension for any period or rearrangement, or applied toward the payment of debt secured by any lien, Secured Party shall be, and is hereby, subrogated to all the rights, titles, interests and liens securing the debt so renewed, extended, rearranged or paid.

6.08 Secured Party at any time may forward to Debtor a statement of accounts showing the outstanding indebtedness pursuant to the Obligations, including all charges, expenses and interest chargeable to Debtor in connection therewith, and any payment by Debtor against the loans (including proceeds collected by Secured Party and applied on the Obligations), and the total of Debtor's indebtedness as of the date thereof, and such statement of account shall be deemed correct in all respects and shall be conclusively binding upon Debtor, unless Debtor makes specified objections to the same in writing within five (5) days from the date such statement is sent to Debtor.

6.09 To the extent that Secured Party has advanced or will advance funds to or for the account of Debtor to enable Debtor to purchase or otherwise acquire specific types or items of Collateral, Secured Party may at its option pay such funds (i) directly to the person from whom Debtor will make such purchase or acquire such rights or (ii) to Debtor, in which case Debtor covenants promptly to pay the same to such person and forthwith furnish to Secured Party, on request, evidence satisfactory to Secured Party that such payment has been made from the funds so provided by Secured Party for such payment.

6.10 The powers conferred upon Secured Party by this Security Agreement are to protect its interest in the Collateral and shall not impose any duty upon Secured Party to exercise any such powers. Debtor hereby agrees that Secured Party shall not be liable for, nor shall the indebtedness evidenced by the Obligations be diminished by, Secured Party's failure to collect upon, foreclose, sell, seize or otherwise obtain value for the Collateral, or any part thereof, or for any delay in so doing, and Secured Party shall not be under any obligation to take any action in connection therewith (except as may be expressly required by Section 9.505 of the Code, if applicable). Secured Party shall use reasonable care in the custody and preservation of any Collateral in its possession but need not take any steps to keep the Collateral identifiable. Secured Party shall have no duty to comply with any recording, filing or other legal requirements necessary to establish or maintain the validity, priority or enforceability of Secured Party's rights in or to any of the Collateral.

6.11 Time shall be of the essence for the performance of any act under this Security Agreement or the Obligations, but Secured Party's acceptance of partial or delinquent payments or any forbearance, failure or delay by Secured Party in exercising any right, power or remedy hereunder shall not be deemed a waiver of any obligation of Debtor or any Obligor, or of any right, power or remedy of Secured Party; and no partial exercise of any right, power or remedy shall preclude any other or further exercise thereof. Secured Party may remedy any default hereunder or in connection with the Obligations without waiving the default so remedied, or waive any default hereunder or in connection with the Obligations without waiving any other default including, without limitation, other occurrences of the same default, nor shall such action by Secured Party waive any prior or subsequent default.

6.12 If Debtor is not the only party liable on the Obligations or granting security therefor, Debtor (a) waives (i) any and all notice of acceptance, creation, modification, rearrangement, renewal or extension for any period of any instrument executed by such other party in connection with the Obligations, and (ii) any defense of such other party by reason of disability, lack of authorization, cessation of the liability of such other party or for any other reason and (b) authorizes Secured Party, without notice or demand and without any reservation of rights against Debtor and without affecting Debtor's liability hereunder or on the Obligations, from time to time to (x) take and hold other property, other than the Collateral, as security for the Obligations, and exchange, enforce, waive and release any or all of the Collateral, (y) apply the Collateral in the manner permitted by this Security Agreement, and (z) renew, extend for any period, accelerate, amend or modify, supplement, enforce, compromise, settle, waive or release the obligations of any Obligor or any instrument or agreement of such other party with respect to any or all of the Obligations or Collateral.

6.13 Secured Party shall be under no duty whatsoever to make or give any presentment, notice of dishonor, protest, demand for performance, notice of non-performance or other notice or demand in connection with any Collateral or the Obligations, or to take any steps necessary to preserve any rights against any Obligor or other person or entity. Debtor waives any right of marshaling in respect of any and all Collateral, and waives any right to require Secured Party to proceed against any Obligor or other person or entity, exhaust any Collateral or enforce any other remedy which Secured Party now has or may hereafter have against any other person or entity. Debtor hereby agrees that if Secured Party agrees to a waiver of any provision hereunder, or an exchange of or release of the Collateral, or the addition to or release of any Obligor or other person or entity, any such action shall not constitute a waiver of any of Secured Party's other rights or of Debtor's obligations hereunder.

6.14 Debtor hereby waives any demand, notice of default, notice of acceleration of the maturity of the Obligations, notice of intention to accelerate the maturity of the Obligations, presentment, protest and notice of dishonor as to any action taken by Secured Party in connection with this Security Agreement, any note or other document.

**Section 7. Remedies.** Upon the happening and during the occurrence of any Event of Default specified in Section 5, Secured Party may take any of the following actions without notice or demand to Debtor:

7.01 Declare all or part of the indebtedness pursuant to the Obligations immediately due and payable and enforce payment of the same by either Debtor or any Obligor (provided however, that any partial payments by either Debtor or any Obligor pursuant to the Obligations shall not be deemed to be a payment in full of such indebtedness, or an accord and satisfaction of such indebtedness, or a waiver by Secured Party of any of its rights or remedies hereunder).

7.02 Exercise any rights or remedies under the Code or as may otherwise be available to Secured Party under any applicable laws or in equity.

7.03 Take possession of the Collateral, or at Secured Party's request, Debtor shall, at Debtor's cost, assemble the Collateral and make it available at a location to be selected by Secured Party which is reasonably convenient to Debtor and Secured Party. Secured Party may, at its option, render any equipment unusable that may be included in the Collateral, or at Secured Party's request, Debtor shall render it unusable. In any event, the risk of accidental loss or damage to, or diminution in value of Collateral shall be on Debtor, and Secured Party shall have no liability whatsoever for failure to obtain or maintain insurance, nor to determine whether any insurance ever in force is adequate as to amount or as to risk insured.

7.04 As may be applicable, sell or lease, in one or more sales or leases, apply, set-off, collect or otherwise dispose of any or all of the Collateral in its then condition or in any commercially reasonable manner as Secured Party may elect, in a public or private transaction, at any location as deemed reasonable by Secured Party (including, without limitation, Debtor's premises), either for cash or credit or for future delivery at such price as Secured Party may deem fair, and (unless prohibited by the Uniform Commercial Code, as adopted in any applicable jurisdiction) Secured Party may be the purchaser of any or all Collateral so sold. Any such sale or transfer by Secured Party either to itself or to any other person shall be absolutely free from any claim or right by Debtor, including any equity or right of redemption, stay or appraisal which Debtor has or may have under any rule of law, regulation or statute now existing or hereafter adopted. It shall not be necessary that the Collateral or any part thereof be present at the location of any such sale or transfer. In the event Secured Party deems it advisable to do so, it may restrict the bidders or purchasers of any such sale or transfer to persons who will represent and agree that they are purchasing the Collateral for their own account and not with the view to the distribution or resale of any of the Collateral. Secured Party may, at its discretion, provide for a public sale, and any such public sale shall be held at such time to times within ordinary business hours and at such place or places as Secured Party may fix in the notice of such sale. Secured Party shall not be obligated to make any sale pursuant to any such notice.

4.20 Debtor shall at all times keep the Collateral, including proceeds, or cause it to be kept (when in the possession of warehousemen, bailees, agents, independent contractors or other third persons), separate and distinct from other property (except as to the attachment of fixtures to real estate).

**Section 5. Defaults.** Any of the following events shall be considered an Event of Default under this Security Agreement:

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5.03 Default is made by Debtor or any Obligor in the performance of any covenants or agreements contained in this Security Agreement or in any other document now or hereafter executed in connection with or as security for the Obligations.

5.04 The sale, assignment, distribution, transfer or granting of a lien on any of the Collateral to or in favor of any party other than Secured Party, unless otherwise expressly permitted by this Security Agreement or in writing by Secured Party.

5.05 The violation by Debtor or any Obligor of, or the failure of the Collateral to comply with, any applicable law, statute, ordinance, regulation or administrative order.

5.06 The loss, theft, substantial damage to or destruction of the Collateral or of any material portion thereof (whether or not covered by insurance).

5.07 The entry of a judgment, issuance of an injunction, order of attachment, or any other process against Debtor or any Obligor or the Collateral which in the sole opinion of Secured Party impairs Debtor's (or any such Obligor's) ability to pay or perform the Obligations.

5.08 Debtor or any Obligor shall respectively:

- (a) die, dissolve or otherwise terminate its existence in its form as of the date hereof;
- (b) become insolvent or suffer a business failure;
- (c) have a custodian, receiver or agent appointed or authorized to take charge of its properties;
- (d) make an assignment for the benefit of creditors or call a meeting of creditors for the composition of debts; or
- (e) be subject to the commencement of any proceeding in bankruptcy or under other insolvency laws.

5.09 In the sole opinion of Secured Party, there is any deterioration, impairment, decline in character or value, or material adverse change (whether actual or reasonably anticipated) in either:

- (a) the assets, operations or conditions of Debtor or any Obligor; or
- (b) any part of the Collateral or any other property subject to a lien in favor of Secured Party as security for the Obligations that causes the Collateral or such other property in the judgment of Secured Party to become unsatisfactory as to character or value.

5.10 Any guaranty or surety executed in connection with the Obligations shall be terminated or revoked, or payment shall be refused under any letter of credit securing any or all of the Obligations or any such letter of credit shall expire without the written consent of Secured Party, or any event occurs which in the sole opinion of Secured Party would materially and adversely affect Debtor's or any Obligor's ability to pay or perform the Obligations.

5.11 Default by Debtor or any Obligor in any payment of principal or of interest on any other indebtedness, guaranty or other obligation (whether to Secured Party or to any other party) provided with respect thereto, or in the performance of any other agreement, term or condition if the effect of such default is to cause such obligation to become due on demand or before its stated maturity or to permit the holder(s) of such obligation or the trustee(s) under any such agreement or instrument to cause such obligation to become due on demand or prior to its stated maturity, whether or not such default or failure to perform should be waived by the holder(s) of such obligation or such trustee(s).

#### **Section 6. Rights, Duties and Powers of Secured Party.**

6.01 Secured Party may enforce its rights hereunder without prior judicial process or judicial hearing, and to the extent permitted by law, Debtor expressly waives any and all legal rights which might otherwise require Secured Party to enforce its rights by judicial process. Debtor recognizes and concedes that such non-judicial remedies are consistent with usage of trade, are responsive to commercial necessity, and are the result of bargain at arms' length.

6.02 Debtor hereby grants to Secured Party, in connection with the protection, exercising or assuring of Secured Party's rights, interests and remedies hereunder, the right to receive, change the address for delivery, open and dispose of mail addressed to Debtor, and to execute, assign and endorse negotiable and other instruments for the payment of money, documents of title or other evidences of payment, shipment or storage for any form of Collateral on behalf of and in the name of Debtor.

6.03 Secured Party may, at its option, discharge any taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Secured Party immediately and without demand for any payment so made, plus interest thereon at the Highest Lawful Rate.

6.04 Debtor hereby irrevocably appoints Secured Party as Debtor's true and lawful agent and attorney-in-fact, with full power of substitution, in Secured Party's name or Debtor's name or otherwise, but at Debtor's cost and expense and without notice to Debtor, to obtain, adjust, sell and cancel any insurance with respect to the Collateral, and endorse any draft drawn by insurers of the Collateral. Secured Party may apply any proceeds of such insurance to the Obligations (whether or not due).

6.05 Secured Party may transfer any or all of the indebtedness evidenced by the Obligations, and upon any such transfer Secured Party may transfer any or all of the Collateral and shall be fully discharged thereafter from all liability therefor. Any transferee of the Collateral shall be vested with all rights, powers and remedies of Secured Party hereunder. With respect to any partial transfer of Collateral, Secured Party shall retain all rights, powers and remedies hereby given with respect to the retained Collateral. Secured Party may at any time deliver any or all of the Collateral to Debtor whose receipt shall be a complete and full acquittance for the Collateral so delivered, and Secured Party shall thereafter be discharged from any liability with respect to such Collateral.

6.06 In connection with any transfer or sale (to Secured Party or any other person or entity) of the Collateral, Secured Party is hereby granted a transferable license or other right to use, without any charge, any of Debtor's labels, patents, copyrights, trade names, trade secrets, trademarks or other similar property in completing production, advertising or selling such Collateral, and Debtor's rights under all licenses and franchise agreements shall inure to the benefit of Secured Party and any transferee of all or any part of the Collateral.

6.07 The rights, powers and remedies of Secured Party hereunder shall be in addition to all rights, powers and remedies given by law or in equity. The exercise by Secured Party of any one or more of the rights, powers and remedies herein shall not be construed as a waiver of any other rights, powers and remedies. Regardless of whether or not the Uniform Commercial Code is in effect in the jurisdiction where such rights, powers and remedies are asserted, Secured Party shall have the rights, powers and remedies of a secured party under the Code. If any of the Obligations are given in renewal, extension for any period or rearrangement, or applied toward the payment of debt secured by any lien, Secured Party shall be, and is hereby, subrogated to all the rights, titles, interests and liens securing the debt so renewed, extended, rearranged or paid.

6.08 Secured Party at any time may forward to Debtor a statement of accounts showing the outstanding indebtedness pursuant to the Obligations, including all charges, expenses and interest chargeable to Debtor in connection therewith, and any payment by Debtor against the loans (including proceeds collected by Secured Party and applied on the Obligations), and the total of Debtor's indebtedness as of the date thereof, and such statement of account shall be deemed correct in all respects and shall be conclusively binding upon Debtor, unless Debtor makes specified objections to the same in writing within five (5) days from the date such statement is sent to Debtor.

6.09 To the extent that Secured Party has advanced or will advance funds to or for the account of Debtor to enable Debtor to purchase or otherwise acquire specific types or items of Collateral, Secured Party may at its option pay such funds (i) directly to the person from whom Debtor will make such purchase or acquire such rights or (ii) to Debtor, in which case Debtor covenants promptly to pay the same to such person and forthwith furnish to Secured Party, on request, evidence satisfactory to Secured Party that such payment has been made from the funds so provided by Secured Party for such payment.

6.10 The powers conferred upon Secured Party by this Security Agreement are to protect its interest in the Collateral and shall not impose any duty upon Secured Party to exercise any such powers. Debtor hereby agrees that Secured Party shall not be liable for, nor shall the indebtedness evidenced by the Obligations be diminished by, Secured Party's failure to collect upon, foreclose, sell, seize or otherwise obtain value for the Collateral, or any part thereof, or for any delay in so doing, and Secured Party shall not be under any obligation to take any action in connection therewith (except as may be expressly required by Section 9.505 of the Code, if applicable). Secured Party shall use reasonable care in the custody and preservation of any Collateral in its possession but need not take any steps to keep the Collateral identifiable. Secured Party shall have no duty to comply with any recording, filing or other legal requirements necessary to establish or maintain the validity, priority or enforceability of Secured Party's rights in or to any of the Collateral.

6.11 Time shall be of the essence for the performance of any act under this Security Agreement or the Obligations, but Secured Party's acceptance of partial or delinquent payments or any forbearance, failure or delay by Secured Party in exercising any right, power or remedy hereunder shall not be deemed a waiver of any obligation of Debtor or any Obligor, or of any right, power or remedy of Secured Party; and no partial exercise of any right, power or remedy shall preclude any other or further exercise thereof. Secured Party may remedy any default hereunder or in connection with the Obligations without waiving the default so remedied, or waive any default hereunder or in connection with the Obligations without waiving any other default including, without limitation, other occurrences of the same default, nor shall such action by Secured Party waive any prior or subsequent default.

6.12 If Debtor is not the only party liable on the Obligations or granting security therefor, Debtor (a) waives (i) any and all notice of acceptance, creation, modification, rearrangement, renewal or extension for any period of any instrument executed by such other party in connection with the Obligations, and (ii) any defense of such other party by reason of disability, lack of authorization, cessation of the liability of such other party or for any other reason and (b) authorizes Secured Party, without notice or demand and without any reservation of rights against Debtor and without affecting Debtor's liability hereunder or on the Obligations, from time to time to (x) take and hold other property, other than the Collateral, as security for the Obligations, and exchange, enforce, waive and release any or all of the Collateral, (y) apply the Collateral in the manner permitted by this Security Agreement, and (z) renew, extend for any period, accelerate, amend or modify, supplement, enforce, compromise, settle, waive or release the obligations of any Obligor or any instrument or agreement of such other party with respect to any or all of the Obligations or Collateral.

6.13 Secured Party shall be under no duty whatsoever to make or give any presentment, notice of dishonor, protest, demand for performance, notice of non-performance or other notice or demand in connection with any Collateral or the Obligations, or to take any steps necessary to preserve any rights against any Obligor or other person or entity. Debtor waives any right of marshaling in respect of any and all Collateral, and waives any right to require Secured Party to proceed against any Obligor or other person or entity, exhaust any Collateral or enforce any other remedy which Secured Party now has or may hereafter have against any other person or entity. Debtor hereby agrees that if Secured Party agrees to a waiver of any provision hereunder, or an exchange of or release of the Collateral, or the addition to or release of any Obligor or other person or entity, any such action shall not constitute a waiver of any of Secured Party's other rights or of Debtor's obligations hereunder.

6.14 Debtor hereby waives any demand, notice of default, notice of acceleration of the maturity of the Obligations, notice of intention to accelerate the maturity of the Obligations, presentment, protest and notice of dishonor as to any action taken by Secured Party in connection with this Security Agreement, any note or other document.

**Section 7. Remedies.** Upon the happening and during the occurrence of any Event of Default specified in Section 5, Secured Party may take any of the following actions without notice or demand to Debtor:

7.01 Declare all or part of the indebtedness pursuant to the Obligations immediately due and payable and enforce payment of the same by either Debtor or any Obligor (provided however, that any partial payments by either Debtor or any Obligor pursuant to the Obligations shall not be deemed to be a payment in full of such indebtedness, or an accord and satisfaction of such indebtedness, or a waiver by Secured Party of any of its rights or remedies hereunder).

7.02 Exercise any rights or remedies under the Code or as may otherwise be available to Secured Party under any applicable laws or in equity.

7.03 Take possession of the Collateral, or at Secured Party's request, Debtor shall, at Debtor's cost, assemble the Collateral and make it available at a location to be selected by Secured Party which is reasonably convenient to Debtor and Secured Party. Secured Party may, at its option, render any equipment unusable that may be included in the Collateral, or at Secured Party's request, Debtor shall render it unusable. In any event, the risk of accidental loss or damage to, or diminution in value of Collateral shall be on Debtor, and Secured Party shall have no liability whatsoever for failure to obtain or maintain insurance, nor to determine whether any insurance ever in force is adequate as to amount or as to risk insured.

7.04 As may be applicable, sell or lease, in one or more sales or leases, apply, set-off, collect or otherwise dispose of any or all of the Collateral in its then condition or in any commercially reasonable manner as Secured Party may elect, in a public or private transaction, at any location as deemed reasonable by Secured Party (including, without limitation, Debtor's premises), either for cash or credit or for future delivery at such price as Secured Party may deem fair, and (unless prohibited by the Uniform Commercial Code, as adopted in any applicable jurisdiction) Secured Party may be the purchaser of any or all Collateral so sold. Any such sale or transfer by Secured Party either to itself or to any other person shall be absolutely free from any claim or right by Debtor, including any equity or right of redemption, stay or appraisal which Debtor has or may have under any rule of law, regulation or statute now existing or hereafter adopted. It shall not be necessary that the Collateral or any part thereof be present at the location of any such sale or transfer. In the event Secured Party deems it advisable to do so, it may restrict the bidders or purchasers of any such sale or transfer to persons who will represent and agree that they are purchasing the Collateral for their own account and not with the view to the distribution or resale of any of the Collateral. Secured Party may, at its discretion, provide for a public sale, and any such public sale shall be held at such time to times within ordinary business hours and at such place or places as Secured Party may fix in the notice of such sale. Secured Party shall not be obligated to make any sale pursuant to any such notice.

[illegible]